

## **REMARKS/ARGUMENTS**

### **Allowable Subject Matter**

The Applicant notes the Examining Attorney has indicated that claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim. Applicant appreciates the same and is submitting arguments and points in support of the allowability of the base claim, and therefore requests that any amendment be held in abeyance until the allowability of the underlying base claim is determined.

The applicant further notes that the Examining Attorney has indicated that claim 7 would be allowable if rewritten to overcome the section 112 rejection. Applicant appreciates the same and has responded to and removed the section 112 rejection as to claim 7, as described above.

### **Claim Objections**

The examiner has objected to claims 1-7, to the term "may be". In response to the rejection, applicant has amended each of the claims in question, thereby removing the rejection.

The examiner has objected to claims 8-13, to the term "a tray framework". In response to the rejection, applicant has amended the claims to recite "the tray framework".

The examiner has rejected claim 14, to the term “framework”. In response to the rejection, applicant has amended the claim to change “framework” to “tray framework”, thereby removing the rejection.

### **Section 112 Rejections**

The examiner has rejected claim 7 under section 112 for being incomplete for omitting essential structural cooperative relationships of elements. In response, the Applicant has amended claim 7 to depend from claim 4 instead of claim 5, which applicant submits removes the grounds for rejection.

### **Obviousness - Section 103(a) Rejection**

The examiner has rejected claims 1-3, 5 and 8-13 under Section 103(a) as being unpatentable over Ghandeharizadeh '229 in view of Vidacovich '515. Applicant requests the Examiner reconsider the rejection for the reasons and arguments set forth herein.

First of all, there is nothing in the Ghandeharizadeh '229 reference or in the Vidacovich '515 reference, which suggests or teaches the desirability of the combination and therefore the Examiner has not met the minimum required showing for *prima facie* obviousness. Just because Vidacovich '515 suggests in that specific tray that other accessories may be substituted, does not mean there was a teaching by Ghandeharizadeh '229, a completely different configuration

and application, to combine it with Vidacovich '515. Vidacovich is a pivoting tray that completely opens up and cannot achieve the same density as this invention.

Furthermore, the Ghandeharizadeh '229 reference provides the exit for the fiber optic cables out the front and down to a different vertical level (See Figure 2), which is a different application. The present invention routes the fiber optic cables to the rear of the tray framework on the same horizontal level for better cable management.

Claim 6 has been rejected in further view of Larson et al. (5,530,954), and for the reasons set forth above with respect to claim 1, claim 6 is allowable over the art.

The examiner has rejected claims 14 & 15 under Section 103(a) as being unpatentable over Allen '224 in view of Ghandeharizadeh '229. In claim 14, the first fiber optic cable passageway is further away from the first and the second fiber optic adapters, and the first fiber optic cable goes to the first or farthest passageway, and the second fiber optic cable goes to the second or closest passageway, thereby causing a crossing of the fiber optic cables as shown in Figure 5. None of the prior art shows this and therefore the prior art cumulatively does not show this element, and the combination made by the examiner is therefore incomplete. The examiner has therefore not met the minimum required showing for *prima facie* obviousness.

Furthermore, there is nothing in the references which suggests the desirability of the combination and therefore the Examiner has additionally not met the minimum required showing for *prima facie* obviousness for this reason.

In the U.S. Court of Appeals for the Federal Circuit case of *In Re: Lee*, 61 U.S.P.Q. 2d 1430, decided January 18, 2002, the Federal Circuit held:

... Thus, when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. The Board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

The examining attorney has therefore failed to meet the requirement to set forth with specificity the general knowledge in the art to enable a finding that the person having ordinary skill in the art would make such combination.

As the PTO recognizes in MPEP 2142:

The legal concept of *prima facie* obviousness is a procedural tool of examination which applies broadly to all arts. It allocates who has the burden of going forward with production of evidence in each step of the examination process.... The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of non-obviousness.... The initial evaluation of *prima facie* obviousness

thus relieves both the Examiner and Applicant from evaluating evidence beyond the prior art and the evidence in the specification as filed until the art has been shown to suggest the claimed invention.

MPEP 2143.01 provides:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re: Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

The Federal Circuit has several times expressly addressed the issue of how to evaluate an alleged case of *prima facie* obviousness to determine whether it has been properly made. Thus, *In re: Geiger* stated in holding that the PTO “failed to establish a *prima facie* case of obviousness:

Obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. *ADC Hospital Systems, Inc. V. Monteffore Hospital*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

### **Prior Art Made of Record and Not Relied Upon**

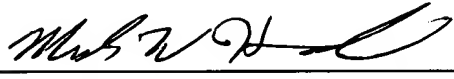
The Applicant notes the prior art made of record but not relied upon and asserts that for the reasons set forth above, the claims are allowable over the art made of record.

## Conclusion

Applicant therefore submits Claims 1-15 are in a position to proceed to allowance.

Respectfully submitted,

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